O. offl. Secrets
46

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File No.

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Subject:—

Opinions Under the

Official Secrets Act, 1923

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C O N T E N T S.

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SC. 12/7
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Office of the R.L.A.

Wrongful communication of any secret official document or information is an offence under clause (a) of section 5(1) of the Official Secrets Act, 1923. The expression "official secret" has b not been defined in the Act. In Emperor vs. Karanjia (48 B.L.R. 151) Divatia J. observed at page 153 :

> "It is no doubt true that nowhere is the expression "official secret" defined, but looking to the purpose and scheme of the Official Secrets Act, especially sections 3 to 10, which create offences against the Government for publication of official secrets, they have all reference to secrets of one or the other department of the Government or the State and not to any secret of a private office."

Whether or not the information relating to the continuance of leave to Mr. Mirchandani till 21st September 1946 is an official secret is a question of fact which it is for the administrative department to decide, It appears from the Chief Secretary's note that the case was treated as confidential and put into a confidential box in transit and the file came to him in a sealed packet from Government House. If so, prima facie, the file would constitute a secret official document of the Political and Services Department within the meaning of section 5(1) of the Official Secrets Act, 1923 and the wrongful communication of any material contents thereof would be an offence. The draft circular at page 9 ante does not appear to be strictly in order, What is really necessary to emphasise is that an unauthorised communication of any secret official document or information would be an offence under the Official Secrets Act, 1923.

Sd/-P.N.M.
26-10-46

Remembrancer of Legal Affairs.

U.S. to P. and S.D. , No. 262-Confl, dated 28th October 1946.

S.C. 11/7

The expression "prohibited place" is defined in clause (8) of section 2 ofthe Indian Official Secrets Act, 1923.

Under clause (a), it means -

(1) any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, camps, ship or aircraft belonging to, or occupied by or on behalf of his Majesty.

(ii) any military telegraph or telephone so belonging or occupied.

(iii) any wireless or signal station or office so belonging or occupied, and

(iv) any factory, dockyard or other place so belonging or occupied and used for the purpose of building, repairing, making or storing any munitions of was war, or any sketches, places, models or documents relating thereto, or for the purpose of getting any metals, oil, or minerals of use in time of war.

It will be evident that the various places specified above, which belong to or are occupied by or on behalf of His Majesty, fall within the expression "prohibited place" as defined in clause (a).

The expression "prohibited place" as defined in clause (b) means any place not belonging to His Majesty where any munitions of war or any sketches, models, places or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of, His Majesty, or otherwise on behalf of His Majesty.

Under clause (c), the expression means any pl belonging to or used for the purpose of His Majesty which is for the time being declared by the Central

Govt. by Notification in the Official Gazette to be a prohibited place for the purposes of this Act on the ground that the information with respect thereto. or damage thereto, would be useful to an enemy, and to which a copy of the notification in respect thereof has been fixed in English and in the Vernacular of the locality. From the words underlined, it will be noticed that the fact that the place belongs to or is used by His Majesty would in itself not be sufficient to bring such place within the meaning of the expression "prohibited place" unless it is declared as such by the Central Govt. by a notification in the official Gazette.

Under clause (d) the expression means any railway, road, way or channel or other means of communication by land or water (including any works or structures being part thereof or connected therewith) or any place used for gas, water or electricity works or any other works for purposes of a public character, or any place where any ammunitions of war or any sketches, models, places or documents relating thereto are made, repaired or stored otherwise than for on behalf of His Majesty, which is for the time being declared by the Central Govt. by notification in the Official Gazette to be a prohibited place for the purposes of this Act etc. Under this clause the works of a public nature, such as those mentioned therein, and other places used for making, repairing ammunition etc. would not become "prohibited place" unless they are so declared for the purposes of the Act by the Central Govt. by means of a notification in the Official Gazette.

From the above analysis it will be clear that under sub-clauses (a) and (b) of clause (8) of section 2 of the Indian Official Secrets Act, 1923, no declaration is necessary while declaring a place as a prohibited place while for the purposes of sub-clause (c) and sub-clause (d) a place cannot be deemed

a prohibited place unless it is so declared by the Central Government by issuing a notification in the Official Gazette.

Reply may be :

The view taken at "A" and "B" of the Home Department office note of 11-11-1946 is correct.

Sd/-
15-11

D.S.

I agree Reply may be as proposed by S.A.S.

Sd/A.R.Khan.
16-11-46

R.L.A .

Sd/- P.M.M.
17-11-46

U.R. to H.D. No. 8207 dated the 19th November 1946.

S.C- 11/7

4 copies.

Office of the R.L.A.

The questions for the consideration of the R.L.A. are :-

(1) whether the Editor of the "People's age" can be prosecuted for any offence punishable under the Indian Official Secrets Act, 1923 for publishing the following articles :-

(1) "R.I.N.Chief's Secret Circular" (p.23)

(2) "Secret Military Plan to crush our Freedom Movement" (p. 25)

(3) "Curtain upon G.H.Q.'s Secret Plans" (p. 27)

(4) "G.H.Q.'s latest Wash the Bloodstains off."(p.29)

(5) "Worry in G.H.Q."(p. 35)

(6) "Intelligence. Top Secret"(p. 37)

(7) "Lessons (p. 39)

(8) "U.P.Congress Ministry and the Postal Strike" (p.49)

(2) whether he can be prosecuted for any offence punishable under section 131 or 132 I.P.C. for publishing any of the above articles.

(3) Whether any of the above articles would come within the mischief of any of theclauses of sub-section (1) of section 4 of the Indian Press (Emergency Powers) Act. 1931.

1st question :* From thearticle under heading "R.I.N.Chief's Secret Circular" it is manifest that it is a secret communication addressed by the Flag Officer , Bombay to the General R.I. or Bombay. Moreover thewords "Extracts from order of the Flag Officer (in charge of Royal Indian Navy Ships and Establishments in Bombay) Bombay to the R.I.N." clearly indicate that the editor must have known or had reason to believe that he x had obtained the secret letter in contravention of the Act.

The same may be said about the document containing details of "Operation Asylum" the extracts from which are

cited in the article under the heading "secret Military Plan to crush our Freedom Movement. The article also contains extracts from the Circular issued by the Eastern Command to its regiments. It also publishes a confidential memorandum issued by the Chief Secretary on behalf of the Home Department Political (Bengal) to all District Officers.

Article under the heading "Curtain upon G.H.Q's Secret Plans:- This contains some extracts from a confidential pamphlet entitled "Martial Law and the use of troops in aid of the civil power" which was specially printed by G.H.Q. It is admitted to be a confidential document by the Editor himself.

Article under heading "G.H.Q's Latest": "Wash the Bloodstains off".- This also contains extracts from Training memorandum No. (30). para. 16 - presumably this memorandum is confidential.

The article under the heading "Worry in G.H.Q." contains extracts from a confidential letter addressed by the Quarter Master General to the Northern, Southern and Eastern Commands.

Article under the heading "Intelligence. Top Secret.- The Editor appears to have been in possession of a copy of Eastern Command's Security Intelligence Summary for May 1946. The Editor himself states that these monthly summaries are top secret documents meant only for very high and entrusted officials. Certain portion in Pt. II has been quoted.

Article under "Lessons".- This refers to a pamphlet entitled "Some lessons from the Bombay Riots (February 1946)" issued by the H.Q.Bombay Area. This pamphlet is marked "restricted"

U.P.Congress Ministry and the Postal Strike.- This contains extracts from the U.P.Government's D.O. letter No. 2611(L)/XVIII-138(L)/86 dated 8-7-1946 marked

"Secret and immediate" addressed to all District Magistrates.

Under sub-section (1) of section 5 of the Indian Official Secrets Act, 1923, it is an offence for any person having in his possession or control any secret official document or information which has been obtained in contravention of this Act -

(a) to wilfully communicate the document or information to any person other than a person to whom he is authorised to communicate, or a person to whom it is, in theinterests of the State, his duty to communicate; or

(b) to use the information in his possession in a manner prejudicial to the safety of the STate; or

(c) to retain the document in his possession or control when it is contrary to his duty to retain it, or wilfully falls to return it, or

(d) x x x x x x .

Under sub-section (2) of section 5 it is an offence for any person voluntarily to receive any secret official document or information knowing or having reasonable ground to believe, at the time when he receives it, that the document or information is communicated in contravention of the ACt.

Under sub-section (2) of section 6 of the Act, it is an offence for any person, forany purpose prejudicial to the safety of the State --

(a) to retain any official document, whether or not completed or issued for use, when he has no right to retain it ;

(b) to allow any other person to have possession of any official document issued for his use alone, or to have in his possession any official documents issued for the use of some person other than himself.

Under sub-section (2) of section 2 of the Act, the expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part. and whether the document or information itself or the substance, effect or description thereof only be communicated or received, expressions x referring to obtaining or retaining any document include the copying or causing to be copied of the whole or any part of any document, and expression referring to communication any document include the transfer or transmission of the document.

The expression "official Secrets" is not defined in the Act, but as observed by Divatia J in Emp. V. Karanjia (48 Bom. L.R. p. 151) "looking to the purpose and scheme of the official Secrets Act, especially sections 3 and 10, which create offences against the Government for publication of official Secrets, they have all reference to secrets of the one or the other Departments of the Government or the State and not to any secret of a private office". The Editor must have known or had reason to believe at the time he obtained possession of the secret or confidential documents that they had been obtained in contravention of the provisions of the Act. He not only obtained these documents, but presumably retained them when he had no right to do so, and was bound to restore them. Further he wilfully communicated the contents of the various official documents to the readers of "People's Age" by publishing extracts from the said documents. Consequently there appears a prima facie a good case for prosecuting the

itor for offences under sub-sections (1) and (2) of section

1 of sub-section (2) of section 6 of the Indian Official

Act, 1923. (See R.L.A's No. 359-P-Confl., dated

tion;- Section 131 Indian Penal Code provides :-

abets the committing of mutiny by an officer, sailor or airman, in the Army , Navy or Air

Force or the Queen, or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be ~~pun~~ punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Section 132, Indian Penal Code lays down ;- Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the army, Navy or Air Force of theQueen, shall, if any mutiny be committed in consequence of that abetment, be ~~committed in consequence of that abetment, be~~ published with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

For a prosecution to succeed under section 131 it would be necessary to prove that the Editor had either abatted the committing of mutiny by an officer, soldier sailor or airman in the army, Navy orAir Force or had attempted to seduce such officer, soldier sailor or airman from his allegiance or his duty. And under section 132 it would be necessary not only to show that theEditor had abatted the committing of mutiny by an officer, soldier, sailor or airman, but also to establish that mutiny had in fact been committed in consequence of the abatment. Unless therefore these essential ingredients are clearly proved no prosecution under section 131 or 132, Indian Penal Code wouldbe sustainable.

3rd question.- It does not appear that the articles in question can properly be brought within the purview of any of the clauses of section 4(1) ofthe Indian Press (Emergency Powers) Act, 1931.

Sd/-P.N.M.
23-11-46

Remembrancer of Legal Affairs.

U.R. to H.D. (Poll.) No. 318-Confl., dated the 25th November 1946.

S.C. 11/7 4 copies.

Office of the R.L.A.

The question for R.L.A's consideration are :-

(1)Whether Ramesh Chandra who published the pamphlet entitled "Operation Asylum" can be prosecuted for offence under the Indian Official Secrets Act, 1923; and
(2) Whether the pamphlet comes within the purview of clause (lo) of section 2 of the Indian Press (Emergency Powers) Act, 1931.

Question (1).- The preface to the pamphlet x clearly indicates that "it is based on authentic top-secret military documents". It further proceeds to state :-

"As the confidential documents, which are exposed for the first time to the public view in this pamphlet, show, the plans are meticulously worked out in all details, They are murder plans to drown in blood the militant will of our people for a freedom and power". As pointed out by the editor, "Operation Asylum" is intended to expose "British Military plans to crush the Indian Revolution" and it is based on "authentic top secret military document".

The military plans" as worked out and formulated by the military authorities are exposed at pages 8 to 14 of the pamphlet, and reference is made to the following documents:-

(i) extract from the circular issued by the Eastern Command to all its regiments;

(ii) extract from "Operation Asylum" containing secret military plans, the details of which were tabulated in an extremely confidential circular handed out only to trusted. senior military officers;

(iii)extract from the confidential pamphlet entitled "Instructions Relating to Martial Law and the use of troops in Aid of Civil Power".

When the editor himself f refers to confidential documents and cites extracts therefrom, it becomes evident that he knew or had reason to believe that the documents were obtained in contravention of the provisions of the Act and consequently they should not have been retained or published.

These documents along with others were examined in this

this office on the previous occasion in the case of the "Peoples Age" when the following opinion was expressed .-

> "The editor must have known or had reason to believe at the time he obtained possession of the secret or confidential documents that they had been obtained in contravention of the provisions of the Act. He not only obtained these documents, but presumably retained then when he had no right to do so and was bound to restore them. Further he wilfully communicated thecontents of thevarious official documents to the readers of "Peoples Age" by publishing extracts from the said documents. Consequently there appears prima facie a good case for prosecuting the editor for offence under sub-sections (1) and (2) of section 5 and of sub-section (2) of section 6 of the Indian Official Secrets Act, 1923"

(see R.L.A.'s No. 318-Confl. dated 25-11-46).

As regards the first question, Mr. Ramesh Chandra can be prosecuted for offence under sub-sections (1) and (2) of section 5 and under sub-section (2) of section 6 of the Indian Press (Emergency Powers) Act, 1923 "(cf. R.L.A.'S opinion No. 318-Confl. dated 25-11-1946).

Question (2)/- The term "news-sheet" as defined in clause (6) of section 2 ofthe Indian Press (Emergency Powers) Act, 1931, means any documents other than a newspaper containing --

(i) public news. or

(ii) comments on public news.

(iii) any matter described in sub-section (1) of section 4.

"Unauthorised news-sheet" as defined in clause (lo) of section 2 means any news-sheet other than a news-sheet published by a person authorised under section 15 to publish it.

The pamphlet in question is a document which contains public news in regard to the political independence of India and in regard to the expansion of Indian Army. If the pamphlet

is not published by a person authorised under section 15, it would fall within the meaning of "unauthorised news-sheet" as defined in sec. 2(10) of the Act.

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.D. (Poll.),No. 349-Confl dated the 17th December 1946.

S.C. 12/7

4 copies.